STATE OF MICHIGAN

COURT OF APPEALS

CHARLES WILLIAM GARRATT, Petitioner-Appellant,	UNPUBLISHED January 26, 2012
v	No. 300136 Tax Tribunal
TOWNSHIP OF OAKLAND, Respondent-Appellee.	LC No. 00-342882

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Plaintiff, Charles William Garratt, appeals as of right under MCL 205.753(1) from the judgment of the Michigan Tax Tribunal (the tribunal) to deny him a Principal Residence Exception (PRE) for 2004, 2005, 2006, 2007, 2008, 2009, and 2010. Plaintiff does not appeal the decision regarding 2010. We affirm in regard to 2004, and reverse and remand in regard to 2005, 2006, 2007, 2008, and 2009.

I

A PRE allows an owner to claim an exemption for his principal residence from the tax levied by a local school district for school operating purposes. MCL 211.7cc(1). On August 9, 2007, plaintiff received a notice from the Oakland County Equalization (OCE) that his PRE was being rescinded for the years of 2004, 2005, 2006, and 2007. On September 10, 2007, plaintiff objected to the rescission with a letter hand delivered to the OCE. In February of 2008, plaintiff received a notice from the county treasurer stating that, as a result of the PRE denial, plaintiff still owed additional taxes. Plaintiff then filed a Petition Form with the Small Claims Division of the tribunal in February of 2008 protesting the denial of the PRE for the years of 2004, 2005, 2006, 2007, and 2008. Defendant responded to this by issuing an Answer Form, printed March 24, 2008, which included a previously unreleased decision from defendant's Board of Review regarding plaintiff's hand-delivered objection from September 10, 2007. The decision had been to affirm the rescission of the PRE.

On April 18, 2008, plaintiff received another notice of rescission of his PRE, this time for 2005, 2006, 2007, and 2008. In response, plaintiff filed a letter of appeal with the tribunal on May 23, 2008. On March 20, 2009, plaintiff moved to place the issue in abeyance pending a circuit court decision to determine who owned the property in question. The circuit court held:

1. As joint tenants with the right of survivorship, Plaintiffs Sarah Arnold and Anna Garratt and Charles Garratt a/k/a Charles William Garratt continuously held from 1992 an ownership interest in the dwelling and parcel known as 3800 Adams Road, Oakland Township, Oakland County, Michigan, parcel ID No. 63-N-10-19-400-002, more particularly described in attached Exhibit "A"; the interest of Sarah Arnold and Anna Garratt was terminated; Charles Garratt became and remains the sole owner of that interest.

2. The deed executed on September 30, 2006 from Working, Inc., as grantor, to Similes, a Michigan partnership, as grantee, was executed and recorded in error and, nunc pro tunc is adjudged to be a nullity and so no force or effect.

Following this, the tribunal created a proposed opinion and order on May 26, 2010, that stated that plaintiff would not receive a PRE for 2004, 2005, 2006, 2007, or 2008. The tribunal stated that the PRE for 2004, 2005, 2006, and 2007 could not be appealed because there was no proof that plaintiff appealed the August 9, 2007, notice of rescission. It also stated that 2009 and 2010 could not be decided because the PRE for those years had not yet been denied. For 2008, it stated that the circuit court determination that plaintiff owned the property was not binding, and it then stated that plaintiff had not established that he owned the property. Plaintiff objected to the proposed opinion and order. The tribunal disagreed with plaintiff's objections and issued an order of partial dismissal and final order and Judgment on August 24, 2010, that adopted the proposed order and judgment.

II

Plaintiff first argues that the tribunal did have jurisdiction over 2004, 2005, 2006, 2007, and 2009; thus, the tribunal committed an error of law and adopted a wrong principal. We agree in part and disagree in part. Absent an allegation of fraud, this Court's authority to review a decision of the Tax Tribunal is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. *Stege v Dep't of Treasury*, 252 Mich App 183, 187-188; 651 NW2d 164 (2002). Deference is given to the tribunal's factual findings, and those factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the entire record. *Id.* Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). Issues concerning the interpretation and application of statutes are questions of law that the Court decides de novo. *Danse Corp v City of Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). A Tax Tribunal's actions in regard to dismissing a petition for failure to comply with its rules or orders are reviewed for an abuse of discretion. *Professional Plaza, LLC v City of Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). An abuse of discretion exists where the result is so palpably and grossly violative of fact and logic that it indicates a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.*

The statutory process involved in appealing the rescission of a PRE is complex and contradictory. We interpret the process to work as follows. If the PRE was removed by an assessor, then an appeal must be made directly to the tribunal within 35 days of notice. MCL

211.7cc(13). If the PRE was simply not present on the tax roll, then an appeal must be made to the Board of Review any time up to five days before the December Board of Review. MCL 211.7cc(19). The Board of Review's decision must be appealed to the Department of the Treasury within 35 days of the decision. MCL 211.53b(4). The Department of the Treasury's decision must be appealed to the Department of the Treasury again within 35 days of the decision. MCL 211.7cc(8). The Department of the Treasury's second decision must then be appealed to the tribunal within 35 days of the decision. MCL 211.7cc(13). In any event, appeals may include up to three prior years, and will automatically include subsequent disputed years if no party requests otherwise. MCL 211.7cc(6); MCL 211.7cc(19); MCL 205.737(5)(b).

In this case, when plaintiff first received notice that his PRE for 2004, 2005, 2006, and 2007 was being rescinded, plaintiff appealed to the OCE with a hand-delivered letter. Because the PRE was rescinded by an assessor, plaintiff should have appealed directly to the tribunal. MCL 211.7cc(13). However, the letter plaintiff received only indicates that an appeal should be made to the OCE. Defendant correctly argues that plaintiff had 35 days from the notice to appeal to the tribunal and failed to do so, but plaintiff had no way of knowing that he could have, and should have, appealed directly to the tribunal, and he properly followed the directions on the notice he received. Because plaintiff followed the only directions he was given, and because the appeal process continued on as if there had not been an error, we conclude that this PRE denial was being treated as one that was simply not present on the tax roll, rather than one rescinded by an assessor.

Plaintiff's appeal did end up before the December Board of Review. This is the correct next step in the process of appealing the loss of a PRE that was not present on the tax roll. MCL 211.7cc(19). The December Board of Review affirmed the rescission. The next step would be to appeal that Board of Review decision to the Department of the Treasury. MCL 211.53b(4). Plaintiff did not receive notice of the Board of Review's decision until February of the following year, when the County Treasurer's Office sent him a letter stating that he owed additional taxes because his PRE had been denied. Plaintiff appealed this to the tribunal rather than to the Department of the Treasury as required under MCL 211.53b(4). Plaintiff was required to appeal to the Department of the Treasury twice before appealing to the tribunal. MCL 211.53b(4); MCL 211.7cc(8); MCL 211.7cc(13). Plaintiff failed to do so; thus, we conclude that the tribunal was correct to determine that it did not have jurisdiction over the 2004 PRE. Accordingly, we affirm the tribunal's decision regarding 2004. The PRE for 2005, 2006, and 2007 will be discussed below.

The April 18, 2008, PRE denial from the OCE denied years 2005, 2006, 2007, and 2008. This denial correctly stated that an appeal may be made to the tribunal. MCL 211.7cc(13). Defendant argues that this denial should not be considered because plaintiff would not have signed the affidavit to apply for that PRE until April 29, 2008, eleven days after the PRE was denied. The tribunal accepted the OCE's denial as the operative appeal letter for 2008, and did not state that it was not valid because of the date. We suspect that plaintiff may have signed an incorrect date when signing that affidavit because the OCE could not have responded to a form from the future, and the tribunal considered it valid for the 2008 appeal. Thus, the April 18, 2008, denial will be considered.

The tribunal stated that the April 18, 2008, denial only provided the tribunal with jurisdiction over 2008 because the OCE did not have authority to grant a PRE for 2005, 2006, and 2007, but the sections of the statute it cited in support had nothing to do with this issue.[1] While the OCE is not specifically mentioned, the statutes governing this issue consistently state that the three preceding years may be included in a decision or appeal. MCL 211.7cc(6), (8), (11); MCL 211.53b. The preceding three years tend to be included, and the tribunal considered the April 18, 2008, denial valid for 2008. Thus, we conclude that the tribunal erred in concluding that it did not have jurisdiction over 2005, 2006, and 2007. Accordingly, we reverse the tribunal's decision that it did not have jurisdiction over 2005, 2006, and 2007.

The tribunal "shall automatically add to an appeal of a final determination of a claim for [a PRE] . . . each subsequent year in which a claim for [a PRE] . . . is denied." MCL 205.737(5)(b). The tribunal stated that it did not have jurisdiction over 2009 because a PRE for 2009 had not yet been denied, and MCL 205.737(5)(b) requires that a PRE have been denied for a subsequent year in order for the tribunal to add it on to an appeal. This would generally be correct; however, there is an exception. "This Court has recognized that failure to exhaust administrative remedies is excused where appearance before the Board of Review would be futile. . . . Although we do not imply that had petitioner again protested before the Board of Review, the board would have failed in the performance of its duty, . . . it is reasonable to assume that the board's finding that petitioner was not entitled to tax-exempt status in one year would not be reversed in a subsequent year, particularly where the previous year's dispute is pending before the [tribunal]." *Ass'n of Little Friends v Escanaba*, 138 Mich App 302, 311; 360 NW2d 602 (1984). Defendant argues that, because plaintiff was awarded a PRE for 2010, it would not be reasonable to assume that the board's findings in one year may be reversed in a subsequent year. While, in hindsight, it may not be reasonable to assume that the Board of Review would reverse its findings in a subsequent year, plaintiff did not know that the 2010 PRE would be reinstated *at the time*. At the time plaintiff was appealing to the tribunal, the 2010 PRE had not been reinstated and so it was reasonable to assume that the board's finding that petitioner was not entitled to tax-exempt status in one year would not be reversed in a subsequent year, particularly where the previous year's dispute is pending. Thus, we conclude that it would have been futile to apply for a PRE for 2009, and so plaintiff was excused from that requirement. As a result, we conclude that the tribunal erred in concluding that it did not have jurisdiction over 2009. Accordingly, we reverse the tribunal's decision regarding 2009.

III

Plaintiff next argues that the tribunal was bound by the decision of the circuit court; thus, the tribunal committed an error of law and adopted a wrong principal when it disregarded it in making its decision regarding 2008. We agree. Absent an allegation of fraud, this Court's authority to review a decision of the Tax Tribunal is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. *Stege*, 252 Mich App at 187-188. Deference is given to the tribunal's factual findings, and those factual findings will not be

[1] The cited sections are MCL 211.7cc(2) and (4).

disturbed as long as they are supported by competent, material, and substantial evidence on the entire record. *Id.* Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp,* 193 Mich App at 352-353. Issues concerning the interpretation and application of statutes are questions of law that the Court decides de novo. *Danse Corp,* 466 Mich at 178.

"The circuit court shall have . . . appellate jurisdiction from all inferior courts and tribunals . . .; supervisory and general control over inferior courts and tribunals." Const 1963, art 6, § 13. So, the circuit court is the appellate court of the tribunal. "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *Ashker ex rel Estate of Ashker v Ford Motor Co,* 245 Mich App 9, 13; 627 NW2d 1 (2001). So, an appellate decision on an issue is binding on the tribunal. *Id.* The issue before the tribunal regarding plaintiff's PRE for 2008 was whether or not he was an owner of the property. The circuit court decided that plaintiff was an owner of the property. Thus, the decision of the circuit court on this issue is binding on the tribunal, and so the tribunal erred in disregarding that decision.

Affirmed in part, reversed in part, and remanded in part. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter